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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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12

DATE MAILED:

07/28/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/210,031

Applicant(s)

LORINCZ ET AL.

Examiner

Stephen C Siu

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 and 24-27 is/are allowed.
- 6) ☒ Claim(s) 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

This Action is in response to the Response to Official Office Action filed by the Applicant on June 16, 2000 (paper number 10).

#### **PRIORITY**

Acknowledgement is made of the claim to the benefit of the filing dates of Provisional Application Serial Nos. 60/082,167, 60/070,486 and 60/069,426.

#### **INFORMATION DISCLOSURE STATEMENT**

Acknowledgement is made of receipt of the courtesy copy of DE 44 45 769 C1. However, this reference is in the German language and no statement of relevance is noted. The information disclosure statement filed June 7, 1999 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. The English language patent, U.S. Patent No. 5,786,337 is not listed on Form PTO-1449 and therefore cannot be initialed as indicating Examiner's review of the US Patent.

#### **CLAIM OBJECTIONS**

The claim objections as cited in the Office Action mailed March 13, 2000 (paper number 9) are withdrawn in view of the Applicant's amendment and arguments.

#### **SECTION 112 REJECTION**

The rejection of claims 2-4, 21 and 25-27 are withdrawn upon careful consideration of Applicant's arguments.

#### SECTION 102 REJECTION

The rejection of claims 1-5, 9-20 and 24-27 under 35 U.S.C. 102(b) as being anticipated by Weber, WO 94/02645 is withdrawn upon careful consideration of the Applicant's amendment and arguments.

#### SECTION 103 REJECTION

The rejection of claims 1-20 and 24-27 under 35 U.S.C. 103(a) as being unpatentable over Weber in view of Hurley is withdrawn upon careful consideration of the Applicant's amendment and arguments.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The rejection of claims 21-23 under 35 U.S.C. 103(a) as being unpatentable over Weber in view of Wainwright (US Pat No. 5370128, 12/06/94) is maintained.

Applicant's arguments filed June 16, 2000 have been fully considered but they are not persuasive. Applicant states that Weber does not disclose each and every element as set forth in the claims and therefore, does not render the claimed invention obvious when taken in conjunction with the teachings of Wainwright. However, Wainwright teaches an article of manufacture comprising a container, a lid fitting the

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container, and a brush (cell collecting device). It appears that the one feature distinguishing the article of manufacture as taught by Wainwright and that recited in claims 21-23 of the instant application is the presence of "less than 2 ml of the medium according to claim 20". However, such an article of manufacture containing 0 ml of the medium according to claim 20 would necessarily be encompassed by this claimed invention of claims 21-23 which is the device as taught by Wainwright. Further, in the process of collecting cells utilizing the article of manufacture of Wainwright, one of ordinary skill in the art would have been motivated to include preservation fluid in the container, such as the fluid from the teachings of Weber. Thus, through the combined teachings of Weber and Wainwright, one of ordinary skill in the art would have been motivated to provide an apparatus of the claimed invention with a reasonable expectation of success.

### ***Conclusion***

Claims 1-20 and 24-27 are allowable. Claims 21-23 are not allowed. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

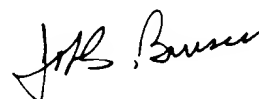
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Inquiries***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Stephen Siu, whose telephone number is (703) 308-7522. The Examiner can normally be reached from 7:00 a.m. to 3:30 p.m. on weekdays. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Michael Woodward, can be reached at (703) 308-4028. Papers related to this application may be submitted to Art Unit 1631 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If applicant does submit a paper by FAX, the original copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office. The Fax number is (703) 308-0294. Please call the Examiner at (703) 308-7522 before the transmission to expedite delivery of the fax. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Stephen Siu



JOHN S. BRUSCA, PH.D.  
PRIMARY EXAMINER